

ESTTA Tracking number: **ESTTA255069**

Filing date: **12/15/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr. Joshua D. Kesselman		
Entity	Individual	Citizenship	UNITED STATES
Address	3315 W. Buckeye Rd., Ste. B Phoenix, AZ 85009 UNITED STATES		

Attorney information	Edward L. Earle HBI International Legal Department 3315 W. Buckeye Rd., Ste. B Phoenix, AZ 85009 UNITED STATES marks@hbiinternational.com Phone:602-955-6688		
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Applicant Information

Application No	77506057	Publication date	12/09/2008
Opposition Filing Date	12/15/2008	Opposition Period Ends	01/08/2009
Applicant	Mary Beth Hughes 2002 Woodford Green Kingwood, TX 77339 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 1978/07/28 First Use In Commerce: 1978/09/01
All goods and services in the class are opposed, namely: Calculating scales; Scales

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2483748	Application Date	02/22/2000
Registration Date	08/28/2001	Foreign Priority Date	NONE
Word Mark	MY WEIGH		

Design Mark	MY WEIGH
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2000/06/04 First Use In Commerce: 2000/10/15 Scales

Attachments	75940395#TMSN.gif (1 page)(bytes) MW MYCRO WEIGH Opposition.pdf (8 pages)(52192 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Edward L. Earle/
Name	Edward L. Earle
Date	12/15/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BBK Tobacco & Foods, Inc.
Opposer,

v.

Mary Beth Hughes (d/b/a Myrcroweigh)
Applicant.

Trademark Application

Mark: MW MYCRO WEIGH

Serial No. 77/506,057

Filed: June 24, 2008

Published: December 9, 2008

Opposition No. _____

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

JOSHUA D. KESSELMAN, an INDIVIDUAL located and doing business at 3315 W. Buckeye Rd., #4, Phoenix, AZ 85009 (“Opposer”) believes that it will be damaged by the registration of the mark MW MYCRO WEIGH shown in Application Serial No. 77/506,057 (“Applicant’s Mark”) by Mary Beth Hughes (“Applicant”) and hereby opposes the registration of said application.

As grounds for opposition, Opposer alleges:

1. Applicant filed a trademark application assigned Application Serial No. 77/506,057 in the United States Patent and Trademark Office (“PTO”) on June 24, 2008 (“the Application”) to register Applicant’s Mark in International Class 009 for use in connection with “calculating scales; scales” (the “Applicant’s Goods”).

2. The Application filed by Applicant on June 24, 2008 (“the Applicant’s Filing Date”) is based on Applicant’s current use of Applicant’s Mark in commerce with Applicant’s Services.

3. The Application for the Applicant’s Mark was published for opposition in the *Official Gazette* on December 9, 2008. On December 10, 2008, the Opposer timely filed a request for a 30-day extension of time to oppose the Application for Applicant’s Mark, which was granted until February 7, 2009.

4. The Opposer is a well-known wholesaler/distributor of scales and other weighing-related products. Opposer invents, sells and distributes many different types of scales including but not limited to, calculating scales, talking scales, gram scales, body fat scales and baby scales (“the Opposer’s Goods”). Opposer’s Goods are offered for sale in a wide range of shapes, sizes, color and designs

5. The Opposer provides information about its scale products and other weighing related goods and services on the Internet on various websites. A sample of websites that are sponsored by Opposer that provide the aforementioned information, include but are not limited to, www.hbiinternational.com, www.jscale.com, and www.myweigh.com. Websites of third parties, including but not limited to, <http://www.oldwillknottsscales.com>, www.saveonscales.com, www.cyberscale.net, www.rightonscales.com, www.aweighscales.com and www.balances.com, also include information about the Opposer’s goods and its other weighing related goods (“Third Party Websites”).

OPPOSER’S MY WEIGH MARK

6. The Opposer is the owner of U.S. Registration Number 2,483,748 for the mark “MY WEIGH” (“the Opposer’s Mark”) filed with the PTO on February 22, 2000

(“the Opposer’s Filing Date”) based on its intention to use the Opposer’s Mark in commerce. The first use in commerce date is listed as October 15, 2000 (“Opposer’s First Use Date”). The first use anywhere date is listed as June 4, 2000.

This registration is valid and subsisting and in full force and effect. A copy of Reg. No. 2,483,748 is enclosed herewith.

7. The Opposer has used Opposer’s Mark in association with the Opposer’s Goods in interstate commerce in connection with scales since at least as early as October 15, 2000 and the Opposer’s Mark is currently in use in commerce with Opposer’s Goods.

8. The Opposer’s Filing Date and the Opposer’s First Use Date for the Opposer’s Mark is earlier than the Applicant’s Application Date.

9. Priority is not an issue in this case because both the Opposer’s Filing Date and the Opposer’s First Use Date for the Opposer’s Mark precede the Applicant’s Filing Date.

10. Opposer has at great expense, continuously engaged in the sale and promotion of scales under and in connection with the Opposer’s Mark.

11. Opposer has at great expense, extensively and continuously offered to the public high quality goods under the Opposer’s Mark. By reason of such efforts and by virtue of the excellence of the goods and services sold under the Opposer’s Mark, the public and trade have come to recognize the Opposer’s mark as identifying Opposer and the goods and services offered under the Opposer’s mark, and Opposer enjoys exceptionally valuable goodwill in connection with the goods and services offered under and in connection with the Opposer’s Mark.

12. The mark proposed for registration by Applicant, is confusingly similar in sight, sound, meaning, and commercial impression to Opposer’s Mark which has been

used in interstate commerce prior to any application for trademark registration by Applicant. Furthermore, the goods and services provided under the Opposer's Mark, and the goods opposed herein are identical and/or related, and would be promoted through the same channels of trade for sale to, and use by, the same category of purchasers.

13. Opposer believes that it will be damaged by the registration of Applicant's Mark since a substantial portion of the purchasing public and/or trade is likely to be confused, or mistakenly believe, that Applicant's Goods offered under Applicant's Mark originate from Opposer, or from the same source as the goods and services sold under Opposer's Mark, or that such goods are sponsored by, endorsed by, or affiliated with the source of the goods and services sold under Opposer's Mark. Such likelihood of confusion would result both in lost sales to Opposer and in damage to the goodwill among purchasers and the trade that the Opposer's Mark symbolizes. Persons familiar with the Opposer's Mark would be likely to buy Applicant's Goods as and for goods made and sold by Opposer. Moreover, any defect, objection or fault found with Applicant's Goods marketed under Applicant's Mark would reflect upon and seriously injure the reputation which has been established for the goods and services sold under the Opposer's Mark.

14. If Applicant is permitted to use and register the mark herein opposed for its goods as specified in the application herein opposed, such registration and use by Applicant are likely to cause confusion, deception and mistake, and will seriously damage Opposer.

15. Allowing registration of Applicant's Mark would result in damages to Opposer. Registration would allow Applicant to profit from the efforts put forth solely by Opposer.

WHEREFORE, Opposer prays that Applicant's application, Serial No. 77/506,057, be rejected, and that the mark therein sought for the goods specified therein be denied and refused.

The Opposer hereby consents and appoints Edward L. Earle, member of the bar of the State of Arizona, whose address is HBI International Legal Department, 3315 W. Buckeye Rd, Suite B, Phoenix, AZ 85009, as its duly authorized agent and attorney in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this opposition, to sign its name to all papers which may hereafter be filed in connection herewith, and to receive all communications related to the same.

Dated: December 15, 2008

Respectfully Submitted,
BBK Tobacco & Foods, Inc.

/s/ Edward L. Earle
By:_____

Edward L. Earle
HBI International Legal Department
3315 W. Buckeye Rd., Ste. B
Phoenix, Arizona 85009
Telephone: (602) 955-6688
Facsimile: (602) 955-3330

Attorney for Opposer

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition has been served upon the Applicant on December 15, 2008 by depositing same in the United States Mail, Express Mail postage prepaid, in an envelope addressed as follows:

MARY BETH HUGHES
2002 WOODFORD GREEN DR
KINGWOOD, TX 77339-3614

/s/ Edward L. Earle

Edward L. Earle

EXHBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,483,748

United States Patent and Trademark Office

Registered Aug. 28, 2001

**TRADEMARK
PRINCIPAL REGISTER**

MY WEIGH

KESSELMAN, JOSHUA (UNITED STATES CITIZEN)
2332 N 32 STREET
PHOENIX, AZ 85008

FIRST USE 5-4-2000; IN COMMERCE 10-15-2000.

SN 73 948,395. FILED 3-22-2001.

FOR SCALES IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).

CATHERINE CAIN, EXAMINING ATTORNEY